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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,254	06/27/2001	James Gips	BOK-002.01	3288

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EXAMINER	
KE, PENG	

ART UNIT	PAPER NUMBER
2174	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/892,254	GIPS ET AL.	
	Examiner	Art Unit	
	Peng Ke	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6,7,10-14 and 47-52* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6,7,10-14 and 47-52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to communications: Amendment, filed on 1/14/05.

This action is final.

Claims 1-4, 6, 7, 10-14, and 47-52 are pending in this application. Claims 1, 14, and 48 are independent claims. In the Amendment, filed on 1/14/05, claim 1, 6, 7, 11, 12, and 14 were amendment, claims 47-52 were added, and claims 5, 8, 9, and 15-46 were cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 7, 10, 13, 14, and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Wagner et al. (US 6,101,264).

As per claim 1, Wagner teaches a method for providing input to a system which uses a visual display for providing user information and an indicator in the visual display for permitting user control, comprising:

(a) choosing a feature associated with a system user (col. 4, lines 32-46);

(b) determining a location of the feature in a video image from a video camera at an initial time (col. 5, lines 43-53);

(c) determining a subsequent location of the feature in a video image from the video camera at a subsequent given time (col. 5, lines 43-52; It is inherent when evaluating each movement of the feature, the system must determining a subsequent location of the feature in a video image from the video camera); and

(d) providing input to the system in the form of a location of the indictor in the visual display at the subsequent given time based upon the location of the feature in the video image at the subsequent given time (col. 4, lines 32-46).

As per claim 2, Wagner teaches the method of claim 1, wherein in the step of choosing, the feature associated with a ms user includes one of a body, face, or article of clothing (col. 4, lines 32-46).

As per claim 3, Wagner teaches the method of claim 1 wherein in the step of choosing the feature includes a portion of a substance or device affixed to the system user (col. 4, lines 32-46).

As per claim 4, Wagner teaches the method of claim 1, wherein the step of providing input includes providing vertical horizontal coordinates (col. 5, lines 5-20).

Claim 5 cancelled.

As per claim 6, Wagner teaches the method of claim 1, further comprising determining the indicator location at the given time based upon a location of the indicator at a previous time, and a change between a location of the feature in the video image at the previous time and the location of the feature in the video image at the given time (col. 6, line 23-36).

As per claim 7, Wagner teaches the method of claim 1, wherein the indicator location is determined at the given time based upon the location of the feature in the video image at the given time independent of previous indicator locations (col. 6, line 23-36).

Claims 8 and 9 are cancelled.

As per claim 10, Wagner teaches the method of claim 1, wherein the system is a computer program (col. 2, lines 6-13).

As per claim 13, Wagner teaches the method of claim 1, wherein a further input provided is based upon a change in the location feature in the video image between a previous time and the given time.

As per claim 14, it is rejected with the same rationale as claim 1. (Supra)

Claims 15-46 are cancelled.

As per claim 47, it is of the same scope as claim 2. (Supra)

Claims 48-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnston et al. et al. (US 6,101,264).

As per claim 48, Johnston et al. teaches a method for emulating a mouse in providing input to a system which uses a visual display for providing user information and an indicator in the visual display for permitting user control, comprising:

(a) choosing a feature associated with a system user; (col. 5, lines 42-61)

(b) determining a location of the feature in a video image from a video camera at an initial time; (col. 11, lines 58-col. 12, lines 2)

(c) determining a subsequent location of the feature in a video image from the video camera at a subsequent given time; (col. 12, lines 25-50)

(d) emulating use of a movement of the mouse to move the indicator in the visual display, by determining the indicator location at the given time based upon a location of the indicator at a previous time, and a change between a location of the indicator at a previous time, and a change between a location of the feature in the video image at the previous time and the location of the feature in the video image a the given time; and (col. 7, lines 10-16)

(e) emulating the use of a click from the mouse to provide an input signal to the system, by providing an input signal in response to the location of the feature in the video image changing by less than a defined amount during a defined period of time. (col. 7, lines 35-48)

As per claim 49, Johnston et al. teaches a method of claim 48, wherein the step of choosing, the feature associated with a system user includes one of a body, face, or article of clothing. (col. 10, lines 5-25)

As per claim 50, Johnston et al. teaches wherein the step of choosing the feature includes a protion of a substance or device affixed to the system user. (col. 11, lines 58-col. 12, lines 2)

As per claim 51, Johnston et al. teaches where the system is a computer program. (col. 8, lines 36-68)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 6,101,264) in view of Takahashi et al. (US 5,999,877).

As per claim 11, Wagner teaches the method of claim 1. However, Wagner fails to teach wherein the input is provided in response to the location of the feature in the video image changing by less than a defined amount during a defined period of time.

Takahashi et al. teaches a method wherein the input is provided in response to the location of the feature in the video image changing by less than a defined amount during a defined period of time (col. 4, lines 10-20).

It would have been obvious to an artisan at the time of the invention to include Takahashi et al.'s teaching with Wagner's method in order to help system discriminate an adjacently running object from a shadow.

As per claim 12, Wagner and Takahashi teach the method of claim 11. Wagner further teaches wherein:

(a) the input provided is selected from a group consisting of letters, numbers, spaces, punctuation marks, other defined characters and signals associated with defined actions to be taken by the system (col. 4, lines 15-34); and

(b) the selection of the input is determined by the location of the feature in the video image (col. 4, lines 15-34).

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 6,101,264) in view of Takahashi et al. (US 5,999,877).

As per claim 52, Johnston teaches the method of claim 48. Johnston further teaches the method wherein the selection of the input signal is determined by the location of the feature in the video image (col. 11, lines 58-col. 12, lines 2)

However he fails to the method wherein:

the input signal provided is selected from a group consisting of letters, number, spaces, punctuation marks, other defined characters and signals associated with defined actions to be taken by the system; and

Dupouy teaches a method wherein the input signal provided is selected from a group consisting of letters, number, spaces, punctuation marks, other defined characters and signals associated with defined actions to be taken by the system. (col. 10, lines 55-col. 11 ,lines 5)

It would have been obvious to an artisan at the time of the invention to include Dupouy's teaching with the method of Johnston in order to allow users to input character and symbol based on gestures.

Response to Argument

Applicant's arguments filed on 1/14/05 have been fully considered but they are not persuasive.

Applicant argues that Wagner fail to teach controlling the location of an indicator in the display, and it provides no input signal to the system to locate an indicator on the visual display.

In response to applicant's arguments, the recitation "controlling the location of an indicator in the display, and it provides no input signal to the system to locate an indicator on the visual display" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites

the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Conlusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peng Ke whose telephone number is (571) 272-4062. The examiner can normally be reached on M-Th and Alternate Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peng Ke